



# OFFICE OF THE INDEPENDENT POLICE AUDITOR

## CITY OF SAN JOSÉ

MARCH 1998

<http://www.ci.san-jose.ca.us/ipa/home.html>

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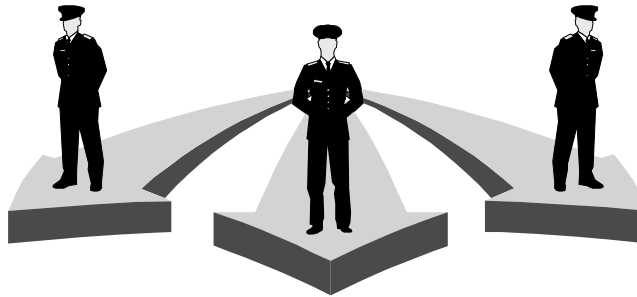
### BLOOD SAMPLE TAKEN BY FORCE

samples were taken against the person's will at a place taking of blood. Complainants alleged that blood was officer while the complainants were handcuffed, the SJPD parking lot. Several of the people that came injuries to the area where the blood was a closer review of existing SJPD policy



The issue involves complaints alleging that blood not suited or appropriate for the safe and sanitary drawn by a technician at the request of a police physically restrained or pinned to the ground outside to the IPA or the PSCU to file a complaint had visible drawn. This precipitated and guidelines.

When a person is arrested for a José police officers transport the Preprocessing Center located adjacent Department. In this center, the arrestee fingerprinted, interviewed, and placed



suspected felony, San arrestee to the to the San José Police will generally be booked, in a locked cell to await

transfer to the county jail. This center has over ten individual holding cells which are monitored by police staff. If the arrestee is not combative, his/her blood will be drawn in one of these rooms. If the arrestee is violent or combative, the arresting officer is barred from bringing the suspect into the center. Reasons given to the IPA were that it is difficult to move the arrestee to and from the center, and because the arrestee can create a disturbance. Therefore, the blood sample from individuals deemed violent or combative is extracted in the parking lot of the Preprocessing Center, or the individual is taken directly to the county jail where the blood is drawn in what appears to be a loading ramp and/or a parking lot for authorized personnel. It is undisputed that, if necessary, an individual, while handcuffed with their hands behind their back, will be forced over the hood of a patrol car or held down by officers on the ground where a technician will extract the blood.

### 1997 YEAR END REPORT

- ☒ New Issue: Blood Samples Taken by Force
- ☒ Updates on Prior Issues and Recommendations
- ☒ Three one-year blocks of statistics comparatively analyzed from January through December for the years 1995 through 1997
- ☒ A statistical background of subject officers and complainants
- ☒ An analysis of complaints and allegations by San José Council Districts
- ☒ Audit analysis and examples

The courts have held that it is lawful to physically restrain an arrestee for the purpose of drawing a blood sample provided it poses virtually no risk, trauma or pain, and is performed in a reasonable manner by qualified medical personnel in a medically accepted environment. The police parking lot would not be deemed an appropriate medical environment. The SJPD and county jail parking lots are poorly lighted, the ground is dirty, and equipment such as arm boards which reduce the risk of infection or injury to the subject's veins or tissue are not available. Risk of injury to the technician or officers is also increased whenever a subject is wrestled to the ground and restrained for the extraction of blood.

### RECOMMENDATION

When taking blood specimens as evidence relevant to the crime at hand, the San José Police Department should do so in a medically accepted environment, according to accepted medical practices and without excessive force.

## YEAR END STATISTICS

### ANALYSIS OF COMPLAINTS RECEIVED

January 1 through December 31, 1997

Classified complaints account for 411 of the 443 complaints received between January 1 through December 31, 1997. The remaining 32 In-process complaints were awaiting classification as of December 31, 1997. Of those 411 complaints, 309 were closed between January 1 through December 31, 1997. The IPA received 36% of the total complaints filed during this reporting period. Data was rounded off to the nearest percentage.

#### SUSTAINED CASES

Of the 309 closed cases, only 147 Formal cases were of the type where the officer involved could have been disciplined. A finding was reached in 73 cases, of which twenty-two complaints were sustained. The other 74 cases were omitted from the illustration below because the cases involved non-sworn officers of the SJPd or because the investigations resulted in a No Finding.

Council Districts	Closed Cases		Sustained Cases	
	CI	DI	CI	DI
1 JOHNSON	2	0	0	0
2 POWERS	2	0	0	0
3 PANDORI	25	10	4	8
4 FERNANDES	1	0	0	0
5 DIAZ	6	2	1	1
6 FISCALINI	6	0	2	0
7 SHIRAKAWA, JR.	6	0	2	0
8 WOODY	1	1	0	1
9 DIQUISTO	2	0	0	0
10 DANDO	4	0	0	0
Unknown/Outside City Limit	1	3	0	3
<b>Total Formal Cases</b>	<b>56</b>	<b>16</b>	<b>9</b>	<b>13</b>

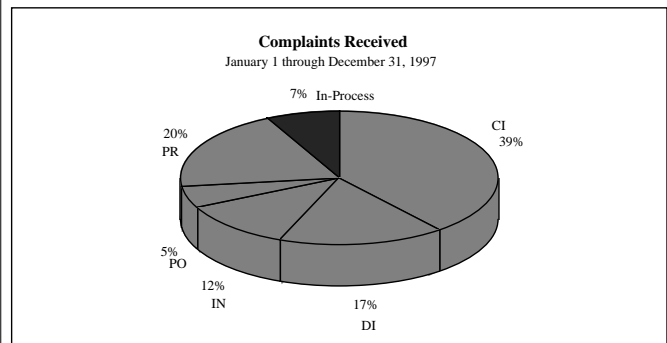
#### DISCIPLINE IMPOSED

In the 73 complaints that resulted in a finding, a discipline was imposed on 27 complaints. The disciplines are listed by increasing level of severity.

Formal Type of Disciplines Imposed	CI	DI	Total	%
Training and/or Counseling	4	3	7	26%
Documented Oral Counseling	1	7	8	30%
Letter of Reprimand	0	7	7	26%
10-Hour Suspension	0	3	3	11%
20-Hour Suspension	0	1	1	4%
160-Hour Suspension	0	1	1	4%
<b>Total</b>	<b>5</b>	<b>22</b>	<b>27</b>	<b>100%</b>

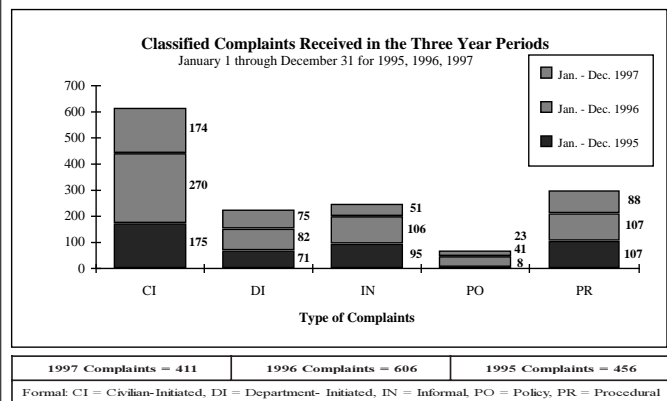
Council Districts	Type of Complaints					Total Cases
	CI	DI	IN	PO	PR	
1 JOHNSON	8	1	2	2	10	23
2 POWERS	6	3	2	3	4	18
3 PANDORI	63	36	15	7	25	146
4 FERNANDES	5	1	2	1	6	15
5 DIAZ	20	4	6	3	12	45
6 FISCALINI	19	4	8	2	5	38
7 SHIRAKAWA, JR.	16	5	6	3	7	37
8 WOODY	12	1	0	0	4	17
9 DIQUISTO	10	2	5	1	10	28
10 DANDO	11	2	3	1	3	20
Unknown/Outside City Limit	4	16	2	0	2	24
<b>TOTAL CASES</b>	<b>174</b>	<b>75</b>	<b>51</b>	<b>23</b>	<b>88</b>	<b>411</b>
<b>%</b>	<b>42%</b>	<b>18%</b>	<b>12%</b>	<b>6%</b>	<b>21%</b>	<b>100%</b>
<b>CASES CLOSED</b>	<b>98</b>	<b>49</b>	<b>51</b>	<b>23</b>	<b>88</b>	<b>309</b>

**Legend:** CI = Citizen-Initiated, DI = Department-Initiated, IN = Informal, PO = Policy, PR = Procedural



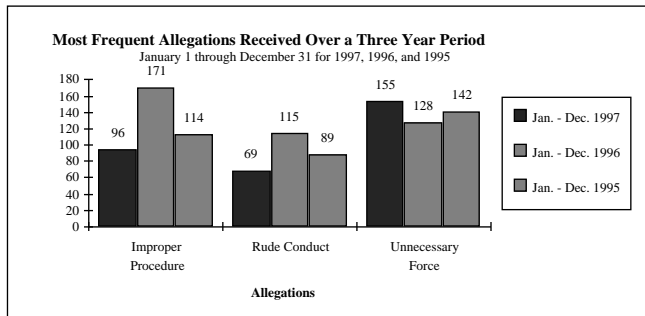
### THREE YEAR ANALYSIS OF COMPLAINTS

The following chart presents a comparative three year study for 1995, 1996, and 1997 complaints. The total number of complaints received from January 1 through December 31, 1997, do not include the In-process complaints.



## MOST FREQUENT ALLEGATIONS FILED

Unnecessary Force (UF), Improper Procedure (IP), and Rude Conduct (RC) allegations consistently yield the highest number of complaints. To compare these three types of allegations in the three year periods of 1997, 1996, and 1995, please refer to the following illustration.



Comparing the 1997 allegations to 1996 and 1995, both Improper Procedure allegations and the Rude Conduct allegations decreased, Unnecessary Force allegations increased 21% from 1996 and 9% from 1995.

## UNNECESSARY FORCE ANALYSIS

Type of Alleged UF	
Baton	26
Canines	1
Car (officer)	13
Car (complainant)	1
Chemical Agent	12
Gun (officer)	3
Feet	19
Ground	16
Hands	69
Handcuffs (tight)	10
Knee	5
Other	12
Unknown	5
<b>Total</b>	<b>192</b>

Area Afflicted	
Head	43
Torso	21
Limbs	45
MBP	14
Unknown	9
<b>Total</b>	<b>132</b>

Degree of Injury	
Major	18
Moderate	19
Minor	42
None	12
Unknown	11
<b>Total</b>	<b>102</b>

There were 249 Formal complaints received from January 1 through December 31, 1997; one hundred and two (102) were Unnecessary Force complaints, which produced 155 allegations. The illustration above presented the type of alleged force, the area afflicted by the alleged force, and the degree of injury. The total figures exceed the number of allegations received because there may be multiple types of alleged force or area of affliction associated with each complaint.

## CASE AUDIT SUMMARIES AND ANALYSIS OF THE AUDITED COMPLAINTS

### Case #1 - IPA confers with PSCU

Complainant alleged that an officer grabbed the complainant by the neck and the arm and walked him/her out of the building. The complainant requested an informal investigation. The PSCU, however, conducted a formal investigation. The IPA concurred with the PSCU's decision because, despite the complainants request for the informal process, the seriousness of the complaint warranted a formal, more in depth investigation.

### Case #2 - IPA requests audio tape recording of PSCU - complainant interview

Complainant initiated the complaint at the PSCU alleging that an on-duty officer had been rude to friends and family while at his/her home. When the case was closed, the complainant called the IPA because the PSCU failed to conduct a formal investigation as allegedly requested. The IPA requested the audio taped interview from the PSCU, where the complainant was asked if he/she preferred a Formal or Informal investigation. Upon review, it was discovered that the complainant requested the Informal process.

### Case #4 - IPA requests to re-open investigation and notes PSCU's refusal

Complainant alleges that the police conducted a home search and a ten year old girl asked to see a search warrant, the officer allegedly responded rudely "smart ass." The PSCU closed the case without investigating the rude conduct allegation. The IPA contacted the PSCU on the issue. The IPA and the PSCU did not agree on the adequacy of the investigation. The PSCU maintained that the alleged comment did not amount to misconduct.

### Case #6 - IPA interviews witness

Complainant alleged that his/her pet was killed by a police officer. The case was closed with no misconduct. The complainant was not satisfied with the investigation because witnesses, which the complainant provided and felt were essential, were not interviewed. The IPA interviewed those witnesses, however, they did not provide information to re-open the case.

### Case #7 - IPA visits scene of alleged misconduct

Complainant alleged that he/she was arrested and taken to jail. Complainant alleges that the officer pushed him/her to the ground outside the jail, causing injuries. In order to better understand the complaint, the IPA visited the scene of the alleged misconduct.

Was the investigation completed in a timely manner?

Yes	434	85%
No	74	15%

Was review requested by the complainant?

Yes	66	41%
No	95	59%

What is the overall quality of the investigation?

Very Thorough	13	8%
Thorough	95	60%
Adequate	33	21%
Inadequate	11	7%
N/A	7	4%

Did the IPA agree with the finding of the investigation?

Yes	147	91%
No	14	9%

Was the case sent to the Chain of Command for Finding and recommendations by the PSCU?

Yes	25	16%
No	117	73%
N/A	17	11%



## RECOMMENDATIONS MADE BY THE IPA



The IPA formally and informally makes recommendations to the San José Police Department. The following chart highlights some of the issues and their related status.

ISSUES RAISED:	DISPOSITION:	CONCLUDED IN:
<b>1993 Year End Report</b>		
Create a new system for the classification of complaints	Adopted	1994 Year End Report
Apply Intervention Counseling to all complaints	Adopted	1994 Year End Report
<b>1994 Year End Report</b>		
Implement citizen "Onlooker Policy"	Adopted	1995 Year End Report
Contact complainants at regular intervals through updates and closing letters	Adopted	1994 Year End Report
Enact policy for collecting physical evidence in use of force cases and immediate investigation by supervisor	Adopted	1995 Year End Report
<b>1995 Year End Report</b>		
Review Off-Duty Employment Practices	Adopted	1997 Year End Report
<b>1996 Year End Report</b>		
Implement process for responding to citizen's request for officer identification	Pending	
Establish Class I and Class II of use of force categories (Class I cases within 180 days & all cases within 365 days)	Adopted	1996 Year End Report
<b>1997 Year End Report</b>		
When forcibly taking a blood specimen from an uncooperative suspect, do so in an accepted medical environment	Pending	
Time limits and a reliable tracking system should be set for every bureau and department involved with the complaint process	Pending	

*To file a complaint against a SJPD officer, contact:*

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We welcome your comments about  
this newsletter!!!



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